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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,113	09/18/2002	Peter A. Montana II	PM01	8210
27797	7590	11/23/2004	EXAMINER	
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			MORAN, KATHERINE M	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 11/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,113

Applicant(s)

MONTANA, PETER A.

Examiner

Katherine M. Moran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Subsequent to the affirmative petition decision of 2/25/04 and Applicant's amendment of 7/30/04, claims 1-20 are pending.

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the structural features of the invention are not illustrated. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 3 and 18 recite methods of making a hat including the step of cutting out pieces to form the brim of the hat from a can carton selected from the group consisting of 18 can cartons and 24 can cartons, and the step of cutting out pieces to form the crown of the hat from a can carton selected from the group consisting of 12 can cartons and 18 can cartons.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 5, 9, 11, 12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Koecher et al. (Koecher, U.S. 5,55,3327). Koecher discloses the invention as claimed. Koecher teaches a method of making a hat 10 comprising cutting pieces out of at least two can cartons in patterns that can be assembled into a hat and assembling the pieces. The pieces are shown in Figure 2 and include a brim 20 and crown 30a,30b. With regard to claim 4, column 3, lines 62-65 recite that reinforcing layers of cardboard may be used to strengthen the hat. A logo plate 12 is also provided for the hat. Since the cardboard pieces are cut, a cutting tool is inherently present in order to do the cutting.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 6, 10, 13, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koecher '327. Koecher discloses the invention substantially as claimed. However, Koecher

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doesn't teach a brim cut from a 24 can carton or two 18 can cartons and a crown cut from a 12 can carton or an 18 can carton. Koecher also doesn't teach cutting out pieces from at least two can cartons selected from the group consisting of 12 can cartons (recited in the spec as being about 7 3/4 inches high, about 10 1/2 inches long, and about 4 3/4 inches wide), 18 can cartons (recited in the spec as being about 7 3/4 inches high, about 15 1/2 inches long, and about 4 3/4 inches wide), and 24 can cartons (recited in the spec as about 10 1/2 inches high, about 15 1/2 inches long, and about 4 3/4 inches wide), and mixtures thereof. Column 2, lines 48-51 recite that the hat pieces may be cut from a single 24 pack beverage container, or that different arrangements or elements may be cut from one or more product containers. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to cut the hat pieces from variously sized containers in order to achieve a particular final product.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koecher '327 in view of Ulrich (U.S. 5,121,506). Koecher discloses the invention substantially as claimed.

However, Koecher doesn't teach a wire attached to the brim to hold the brim in a desired shape. Ulrich '506 teaches headgear 10 with a wire 16 serving as a brim reinforcing member.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Koecher's brim with a wire in order to maintain the brim in a convex cross-sectional configuration.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koecher '327 in view of Cheng (U.S. 6,561,393). Koecher discloses the invention substantially as claimed.

However, Koecher doesn't teach a chin strap attached to the brim. Cheng '393 teaches a hat 10 with a chin strap 38 attached to the brim for engaging under the wearer's chin. Therefore, it

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would have been obvious to one of ordinary skill in the art at the time of the invention to provide Koecher's hat with the chin strap as taught by Cheng in order to maintain the hat in the desired position on the wearer's head.

Conclusion

9. The prior art made of record on the attached PTO-892, and not relied upon, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-3519. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

November 16, 2004

 **KATHERINE MORAN
PRIMARY EXAMINER**

Katherine Moran